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In the Supreme Court of the United States

OCTOBER TERM, 1983

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner

VERSUS

ROBERT H. SCHULTE,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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36pp

QUESTIONS PRESENTED FOR REVIEW

Whether the District Court erred in denying petitioner's Motion to Dismiss and in rendering judgment by holding that the Louisiana Direct Action Statute applied to give respondent a cause of action in Federal Court in Louisiana in contravention of the intent of 28 U.S.C. Section 1332 (c)?

Whether the District Court erred by finding that a policy of automobile liability insurance was issued in Louisiana regardless of the facts on the record establishing that the policy was written and delivered in Mississippi by a Mississippi State Farm agent to a Mississippi resident?

Whether the Court of Appeals erred in affirming the ruling and judgment of the District Court?

DESIGNATION OF CORPORATE RELATIONSHIPS

State Farm Mutual Automobile Insurance Company, filing this Petition for Certiorari as petitioner in this proceeding, states that:

This is its original Designation of Corporate Relationships.

State Farm Mutual Automobile Insurance Company is not owned by any parent corporation.

State Farm Fire and Casualty Company, State Farm Life Insurance Company, and State Farm Health Insurance Company are the subsidiaries of State Farm Mutual Automobile Insurance Company. State Farm Mutual Automobile Insurance Company does not have an ownership interest in any other subsidiaries.

State Farm Mutual Automobile Insurance Company does not have any affiliates.

May 16, 1984.

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STATE FARM MUTUAL AUTOMOBILE
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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The judgment of the District Court for the Eastern District of Louisiana is unreported. The opinion of the Court of Appeals for the Fifth Circuit is unreported. Copies thereof are included in the Appendix to this Petition.

JURISDICTION

The order of the District Court denying petitioner's Motion to Dismiss was entered on January 22, 1982. The order of the District Court denying petitioner's Motion for Reconsideration or New Trial of the Motion to Dismiss was

entered on August 5, 1982. The judgment of the District Court in favor of respondent was entered on June 8, 1983.

The opinion of the Court of Appeals for the Fifth Circuit was made and entered on January 9, 1984; re-hearing was denied on February 17, 1984, and copies of those judgments are appended to this Petition in the Appendix. The judgment of the Court of Appeals for the Fifth Circuit was issued for mandate on February 27, 1984. Recall and stay of the mandate pending filing of this Petition for Certiorari was granted on May 1, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

STATUTES INVOLVED

1. Section 1332 (c) of Title 28 to the United States Code provides as follows:

> "(c) For the purposes of this section and section 1441 of this title [28 USCS Section 1441], a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business: Provided further, That in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business."

2. Louisiana Revised Statutes 22:655, which is also known as the Louisiana Direct Action Statute, provides in pertinent part as follows:

"No policy or contract of liability insurance shall be issued or delivered in this state, unless it contains provisions to the effect that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injury sustained or loss occasioned during the existence of the policy, and any judgment which may be rendered against the insured for which the insurer is liable which shall have become executory, shall be deemed prima facie evidence of the insolvency of the insured, and an action may thereafter be maintained within the terms and limits of the policy by the injured person, or his or her survivors mentioned in Revised Civil Code Article 2315, or heirs against the insurer. The injured person or his or her survivors or heirs hereinabove refered to, at their option, shall have a right of direct action against the insurer within the terms and limits of the policy; and such action may be brought against the insurer alone, or against both the insured and insurer jointly and in solido, in the Parish in which the accident or injury occurred or in the Parish in which an action could be brought against either the insured or the insurer under the general rules of venue prescribed by Article 42, Code of Civil Procedure. This right of direct action shall exist whether the policy of insurance sued upon was written or delivered in the State of Louisiana or not and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the State of Louisiana...." LSA-R.S. 22:655.

3. Mississippi Code, Section 83-17-21 provides as follows:

"No fire, fire marine, accident, health, employers' liability, steam boiler, plate glass, fidelity, surety,

burglary, or other insurance company except life insurance companies, not incorporated under the laws of this state authorized to transact business herein shall make, write, place, or cause to be made, written, or placed any policy, duplicate policy, or contract of insurance of any kind or character or any general or floating policy upon persons or property in this state, except after the said risk has been approved, in writing, by a local agent who is a resident of this state, regularly commissioned and licensed to transact insurance business herein, who shall countersign all policies or contracts of insurance so issued..."

STATEMENT OF THE CASE

1. Proceedings in the District Court.

This action for damages for personal injuries was brought by respondent, Robert H. Schulte (hereinafter "respondent"), against petitioner, State Farm Mutual Automobile Insurance Company (hereinafter "petitioner"), in the United States District Court for the Eastern District of Louisiana. Respondent asserted the existence of diversity jurisdiction in his complaint.

Petitioner filed a Motion to Dismiss, contending that no direct action could be brought against petitioner, because the involved accident occurred in Mississippi with a Mississippi resident who was insured under a policy of automobile liability insurance written and delivered in Mississippi. Petitioner's Motion to Dismiss was denied on January 22, 1982, with written reasons assigned by the Honorable Fred J. Cassibry, United States District Court Judge, which reasons are appended to this Petition in Appendix "A". In denying the Motion to Dismiss, the District

Court held that the insurance policy involved was issued in Louisiana. In applying the Louisiana Direct Action Statute, the Court noted that a Louisiana resident has a right of direct action against an insurance company under this statute when the accident occurs in another state if the insurance policy was issued or delivered in Louisiana. In finding that the policy was issued in Louisiana, the Court noted that the policy booklet included language stating that the policy was "issued" from the regional office listed on the declarations page of the policy. Since petitioner's regional office is located in Louisiana, the Court concluded that the policy had been issued in Louisiana, regardless of the statement of the Mississippi State Farm agent which was submitted in support of the Motion to Dismiss to the effect that the policy was written, issued and delivered in Mississippi. Petitioner's Motion for Reconsideration or for a New Trial of the Motion to Dismiss was denied on August 5, 1982. Appendix "B".

An Answer was filed by petitioner on August 27, 1982, in which petitioner set forth two defenses. First, petitioner alleged that respondent's complaint "fails to state a cause or right of action against defendant." Secondly, petitioner alleged that the Court lacked jurisdiction over the subject matter for the reasons set forth in its Motion to Dismiss.

Trial was held before Judge Cassibry on June 2, 1983. At the conclusion of the trial, the District Court rendered judgment in favor of respondent and against petitioner in the amount of $21,538.50, inclusive of medical bills of $1,538.50, plus costs and legal interest from August 12, 1981 until paid, by judgment entered June 8, 1983. Appendix "C". From this judgment, petitioner appealed, on the grounds that respondent had no right of action against petitioner

under the Louisiana Direct Action Statute and within the intent of 28 U.S.C. Section 1332 (c).

2. Disposition on Appeal

On appeal, the United States Court of Appeals for the Fifth Circuit affirmed. Appendix "E". In a per curiam opinion, the Court deferred to the District Court's resolution of the issue in what the Court of Appeals characterized as a "close diversity case." Appendix "E". While recognizing that no authority existed on the issue which was precisely on point, the District Court's knowledge of Louisiana jurisprudence was held a sufficient basis for adopting the District Court's "reasonable extrapolation" of the law from existing authority. Appendix "E". No authorities were cited by the Court of Appeals in upholding the judgment of the District Court.

3. Statement of the Facts.

The facts necessary to place in their setting the questions now raised can be briefly stated:

Counsel for both parties entered into various stipulations at the time of trial. The parties stipulated that D. L. Smith was at all times material a resident of Jackson, Mississippi, and that respondent, Robert H. Schulte, was at all material times a resident of the Parish of Jefferson, State of Louisiana. Petitioner, State Farm Mutual Automobile Insurance Company, is an Illinois corporation authorized to do and doing business in the State of Louisiana. The accident forming the basis of the litigation occurred in Jackson, Mississippi, on August 13, 1980, between a vehicle in which respondent was a passenger and a vehicle owned and operated by D. L. Smith. On the date of the accident, a policy of

automobile liability insurance issued by petitioner to D. L. Smith was in full force and effect. Finally, both parties entered into a stipulation as to the liability of petitioner, agreeing that the sole proximate cause of the accident was the negligence of D. L. Smith and that no contributory or comparative negligence could be assessed on the part of the respondent.

At the trial, certain medical bills and reports were introduced into evidence, along with copies of the depositions of Larry Hurst and Donald L. Smith. The parties stipulated to the written statement of the Mississippi State Farm agent, Larry Zachary. In addition, State Farm presented the testimony of Terrence Paul Jones, Service Superintendent for the State of Mississippi in petitioner's Mid-South Regional Office, which is located in Monroe, Louisiana. Mr. Jones testified that petitioner operates nationally through twenty-six regional offices, where various administrative functions are performed and where respective data processing centers are located. The Regional Office in Monroe, Louisiana, services policies for the States of Arkansas, Louisiana and Mississippi.

Regarding the procedure by which a policy of automobile liability insurance is obtained, Mr. Jones testified that a prospective policyholder completes a policy form blank and application at the office of a State Farm agent in Mississippi. Then the form is signed by the policyholder and the agent, who is empowered to bind the company and enter into a binding contract of insurance. The agent collects the premium and gives a copy of the application, as well as a preprinted policy contract, to the policyholder. A copy of the application serves as a temporary binder for thirty days. The binder executed with the application form completed by Donald Smith, which was signed by the Mississippi State Farm Agent, Larry Zachary, was dated March 31, 1980.

Once the application form is completed and the policyholder renders payment to the agent, the State Farm agent then mails the application to the Monroe Regional Office. A separate underwriting staff is assigned for each state serviced by the Monroe Office. The appropriate underwriting staff reviews the information on the application and checks pricing of the policy. All the information is then entered into a computer, after which the information is processed and a form is printed. All the forms are mailed to the agent in Mississippi, who also receives the printed declarations page.

Most importantly, before the policy is delivered or mailed to the policyholder in Mississippi, the State Farm agent in Mississippi must countersign the policy where indicated on the declarations page of the policy. Once the agent countersigns the declarations page, the policy is then mailed to the policyholder from the office of the Mississippi State Farm agent. As established by the statement of Larry Zachary, the Mississippi State Farm agent in this case, the policy was countersigned in Jackson, Mississippi, on April 21, 1980, on which date the policy was mailed to Mr. Smith, petitioner's insured, at his address in Jackson, Mississippi.

EXISTENCE OF JURISDICTION BELOW

Respondent, Robert H. Schulte, a resident of the Parish of Jefferson, State of Louisiana, brought suit against petitioner, State Farm Mutual Automobile Insurance Company, and alleged the existence of diversity jurisdiction under 28 U.S.C. Section 1332 (c). Petitioner challenged the jurisdiction of the District Court in the Motion to Dismiss and subsequent Answer filed with the District Court.

ARGUMENT

The primary reason for granting certiorari in this case involves the effect of the District Court's decision upon the exercise of diversity jurisdiction. The result of the decisions of the lower Courts contravenes the intent of the diversity jurisdiction provisions of 28 U.S.C. Section 1332 (c) by encouraging forum-shopping by a plaintiff who resides in a state with a direct action statute and by subjecting a foreign insurance company with a regional office located in that state to suit in Federal Court, thus creating a greater volume of litigation in the Federal Courts. Not only did the courts fail to consider the effect of their determination of this simple issue, but also the decisions were based upon an erroneous interpretation of the Louisiana Supreme Court's decision in *Webb v. Zurich Insurance Company*, 251 La. 558, 205 So.2d 398 (1967), as well as an improper application of the Louisiana Direct Action Statute, LSA-R.S. 22:655, as related to the provisions of 28 U.S.C. Section 1332 (c). Moreover, the facts on the record regarding the procedure utilized by petitioner in its regional offices and the role of the local State Farm agent in Mississippi, who actually wrote, issued, and delivered the policy to the policyholder in Mississippi, were totally ignored.

I. THE DISTRICT COURT ERRED IN DENYING PETITIONER'S MOTION TO DISMISS AND IN RENDERING JUDGMENT BY HOLDING THAT THE LOUISIANA DIRECT ACTION STATUTE APPLIED TO GIVE RESPONDENT A CAUSE OF ACTION IN FEDERAL COURT IN LOUISIANA IN CONTRAVENTION OF THE INTENT OF 28 U.S.C. SECTION 1332 (C), WHICH WAS ENACTED TO DISCOURAGE FORUM-SHOPPING AND TO PREVENT INCREASED LITIGATION IN FEDERAL COURT.

The most significant issue presented for review, which warrants granting of this petition, concerns the impact of the lower Courts' decisions on the provisions of diversity jurisdiction as set forth in Title 28, Section 1332 (c) of the United States Code. The statute provides that an insurer shall be deemed a citizen of the state of which its insured is a citizen, as well as of the state of incorporation and the state where the insurance company has its principal place of business. This provision was enacted in order to prevent a plaintiff from bringing suit in Federal court against a foreign insurer, from whom the plaintiff's citizenship would be diverse, merely by failing to join the non-diverse insured as a defendant. Congress intended this provision to prevent forum-shopping by a plaintiff, seeking damages for personal injuries, whose remedy should be limited to suit in State Court. Finding that the provisions of the Louisiana Direct Action Statute establish a right of action in Federal Court under the facts of this case results in the very situation that the amendment to Section 1332 of Title 28 was designed to prevent. The forum-shopping in this instance allowed a Louisiana plaintiff to bring suit in Federal Court in Louisiana against a foreign insurer, the citizenship of which was found to be diverse because its insured is a citizen of Mississippi. In a case of this nature, the plaintiff should be limited to suit either in Federal Court in Mississippi or in State Court in Mississippi. The District Court's ruling and judgment, which was affirmed by the Court of Appeals, will result in a greater volume of suits in Federal Courts in Louisiana in cases where Louisiana residents are involved in accidents in other states with citizens of other states who are insured by companies, including the petitioner, which choose to locate a regional office in Louisiana.

For example, since all State Farm policies in the Mid-South Region are processed through the regional office in

Monroe, Louisiana, under the interpretation of the statute pronounced by the District Court herein, any lawsuit involving a State Farm insured in the entire Mid-South area could be brought in the Federal Courts in Louisiana, assuming other jurisdictional requirements are met. Such a holding would subject all insurance companies with regional offices located in Louisiana to suit in Louisiana Federal Courts, regardless of where the accident occurred, or the domicile of the tortfeasor-insured. In addition, such a holding would result in forum-shopping for those plaintiffs who could establish diversity jurisdiction in Louisiana, even if the accident occurred in a state, such as Mississippi or Arkansas, which does not allow a direct action to be brought against an insurer. Under the provisions of 28 U.S.C. Section 1332 (c), diversity jurisdiction would be present in each case of this nature, thus rendering an insurer subject to suit in Federal Court in Louisiana, regardless of the lack of contacts that insurance company or its insured may have with Louisiana. Clearly, this was neither the intent of Congress in amending Section 1332 nor of the Louisiana Legislature in drafting Louisiana's Direct Action Statute as interpreted by Louisiana Jurisprudence.

In *Kirchman v. Mikula*, 258 So.2d 701 (La.App. 3rd Cir. 1972), a Louisiana citizen brought suit against a New Jersey citizen and his insurer for injuries sustained in an automobile accident which occurred in New Jersey. The Court held that the Louisiana Legislature did not wish to extend the right of direct actions against insurers to a case where a Louisiana resident was injured in another state by a non-resident covered by an automobile liability policy issued in the non-resident state. The Court concluded that although New York had seen fit to grant such an action to its residents, such an extension should be made not by the

judiciary but by the Legislature. The United States Court of Appeals for the Fifth Circuit reached this same result involving the same parties in *Kirchman v. Mikula*, 443 F.2d 816 (5th Cir. 1971).

The extension of diversity jurisdiction allowed by the District Court's interpretation of the Louisiana Direct Action Statute herein is clearly contrary to the principles underlying the jurisdiction of a Federal court sitting in diversity. Consideration should be given to the result of applying the Louisiana statute in question in a manner which is clearly contrary to Federal law. As the Court of Appeals properly recognized, no cases are precisely on point on this issue. Accordingly, a review should be granted to clarify this question, which has ramifications which extend beyond the boundaries of this particular case, such as the encouragement of increased litigation in the Federal courts of matters more properly relegated to a state court where the appropriate jurisdictional requirements have been met.

II. THE DISTRICT COURT ERRED IN HOLDING THAT THE LOUISIANA DIRECT ACTION STATUTE APPLIED AND BY FINDING THAT THE POLICY OF AUTOMOBILE LIABILITY INSURANCE WAS ISSUED IN LOUISIANA REGARDLESS OF THE FACTS ON THE RECORD, WHICH ESTABLISH THAT THE POLICY WAS WRITTEN AND DELIVERED IN MISSISSIPPI BY A MISSISSIPPI AGENT TO A MISSISSIPPI RESIDENT.

Under the provisions of the Louisiana Direct Action Statute as interpreted by Louisiana jurisprudence, no direct action can be brought against an insurer unless the accident occurred in Louisiana or the policy was written or

delivered in Louisiana. LSA-R.S. 22:655. This Direct Action Statute is not a legislative grant of jurisdiction over insurance companies, but merely allows plaintiffs a direct right of action against liability insurers when there exists a cause of action against the insured. Before plaintiff may utilize the direct action procedure, there must be an independent basis of jurisdiction which satisfies due process requirements. *Morse v. Hartford Casualty Insurance Company,* 301 So.2d 741 (La.App. 3rd Cir. 1974); *Farrell v. Wilbert,* 369 So.2d 1087 (La.App. 1st Cir. 1979). Due process, of course, requires that there exists a quantity of meaningful contacts between a nonresident party and the forum state, making it reasonable and consonant with "traditional notions of fair play and substantial justice" to subject the party to this jurisdiction of the forum. *International Shoe Company v. Washington,* 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

Louisiana's Direct Action Statute has been applied to make a fund directly available to one injured as a result of the accident of an insured, provided there are minimum contacts in Louisiana. These minimum contacts were present in the case of *Webb v. Zurich Insurance Company,* 251 La. 558, 205 So.2d 398 (1967), in which the Court found the Direct Action Statute applicable to situations in which either: (1) the policy was issued or delivered in Louisiana; or (2) the accident or injury occurred in Louisiana. In *Webb,* the accident occurred outside of the State of Louisiana, but the policy was secured in Louisiana by an insured domiciled in Louisiana from an agent of the insured that was doing business in Louisiana. In addition, the plaintiffs in *Webb* were Louisiana residents who brought the action against another Louisiana resident in his domicile. Because of the overwhelming Louisiana "contacts," the Court held that a contrary holding would conflict with Louisiana decisions concerning "minimum contact" in the State. *Id.* at 405.

These contacts are not present in the instant case, for the accident occurred in Mississippi and the policy was both written and delivered in Mississippi. As established by the statement of Larry Zachary, the State Farm agent doing business in Mississippi, and as confirmed by the testimony of Terrence Jones, the Service Superintendent for the Mississippi Division of petitioner, State Farm Mutual Automobile Insurance Company, a Mississippi resident, Donald Smith, applied for a State Farm policy at the office of the Mississippi State Farm agent. Once the application was completed, the Mississippi State Farm agent provided coverage through a binder which was effective on the date of the application. Although the information was forwarded to the Mid-South Regional Office, which is located in Monroe, Louisiana, this information was sent for processing. The administrative functions performed by that office are not determinative of the state where the policy was "written or delivered," to track the statutory language. LSA-R.S. 22:655.

The interpretation of the Louisiana Direct Action Statute pronounced in *Webb v. Zurich, supra,* was further explained in *Esteve v. Allstate Insurance Company,* 351 So.2d 117 (La. 1977). In *Esteve,* a Louisiana resident, who was a guest passenger in a car owned by a Louisiana resident and operated by a Louisiana resident, was injured in a collision which occurred in Florida with a vehicle owned and driven by a Florida resident, who was insured by Allstate. The Court in *Esteve* recognized that if the accident occurs in another state, the place of issuance or delivery of the policy becomes controlling. *Id.* at 120. Because the policy in question was issued in Florida, the Court in *Esteve* refused to extend the application of Louisiana Revised Statutes 22:655 to a situation in which the accident occurred in another state and the policy sued upon was issued and delivered in another state.

Federal case law also recognizes the interpretation of the Louisiana Direct Action Statute enunciated in *Webb v. Zurich, supra,* and reaffirmed in *Esteve v. Allstate, supra,* to limit the applicability of the Direct Action Statute to an accident or injury which occurs within Louisiana or to a policy written or delivered in Louisiana. *Kirchman v. Mikula,* 443 F.2d 816 (5th Cir. 1971); *Sacher v. Columbia Steamship Company,* 493 F.2d 1109 (5th Cir. 1974).

The construction of the Court's opinion in *Webb v. Zurich, supra,* which is generally that a direct action lies if the policy is "issued or delivered" in Louisiana, is imprecise. A close reading of the statute reveals that when an accident occurs within Louisiana, the direct action right exists "whether the policy of insurance sued upon was *written or delivered* in the State of Louisiana or not and whether or not such a policy contains a provision forbidding such a direct action." LSA-R.S. 22:655 (emphasis added); *Webb v. Zurich, supra,* at 406. The Court in *Esteve v. Allstate, supra,* focused upon the combination of "issued or delivered" and not upon the "written or delivered" language. The Louisiana Supreme Court may have intended to equate the term "issued" with the statutory wording of "written." Even if such an intent can be assumed, the policy here was neither issued nor written until countersigned by the Mississippi agent in Mississippi.

Since no question exists that the accident occurred in Mississippi and the policy was delivered in Mississippi, the pivotal issue involves the significance of the term "issued," as indicated in the Reasons set forth by the District Court Judge in denying the Motion to Dismiss. For instance, the District Court focused upon the act that the standard policy booklet, which is used nationally by State Farm, contains language which states "the address of the

regional office which issued this policy is shown at the top of the declarations continued page enclosed herein." The presence of the word "issued" in the standard language on the policy booklet is not dispositive of the issue. Moreover, according to the undisputed testimony of Mr. Jones, the agent gives the preprinted insurance contract to the policyholder at the time the application is made.

Mississippi law requires that the Mississippi State Farm agent countersign the policy prior to delivery. Mississippi Code, Section 83-17-21. The statute provides that no insurance company shall make, write, place or cause to be made, written or placed any policy or contract of insurance upon persons or property in Mississippi except after the risk has been improved, in writing, by a local agent who is a resident of Mississippi. Mississippi Code, Section 83-17-21. See also LSA-R.S. 22:1171. By the provisions of Mississippi law, which should have been appropriately applied, the policy only becomes valid after the risk is approved and countersigned by the resident agent.

Furthermore, the fact that this policy was processed through the regional office in Monroe, Louisiana, does not satisfy the minimum contacts requirement of *Webb v. Zurich*, *supra*. Although the procedure explained by Mr. Jones and Mr. Zachary entails some degree of communication between the Jackson, Mississippi office and the Monroe, Louisiana office, this communication, when considered in light of the Mississippi agent's overall supervision of the policy and its coverage, is insufficient to support in personam jurisdiction or to create the right to a direct action. *Sprow v. Hartford Insurance Company*, 594 F.2d 412 (5th Cir. 1979). Given this paucity of Louisiana contacts, it would contravene due process requirements to find petitioner's Mississippi office amenable to process under Louisiana's Long Arm Statute.

Therefore, respondent had no right of action against petitioner in Federal Court within the provisions of the Louisiana Direct Action Statute because the accident occurred in Mississippi with a Mississippi resident who was insured under a policy issued in Mississippi pursuant to an application filed with the State Farm agent in Mississippi who wrote, countersigned, and delivered the policy in Mississippi. In finding that the policy was issued in Louisiana so as to hold that the Louisiana Direct Action Statute was applicable, the Courts below ignored the facts on the record, which should have been considered in their entirety.

CONCLUSION

This Honorable Court should review this case because the manner in which the State Statute was applied will extend diversity jurisdiction in contravention of Congressional intent and will result in an impact upon the already overburdened Federal Courts. In addition, the construction of the term "issued" was manifestly erroneous and contrary to the requirements of Mississippi law. For the reasons set forth, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Petitioner

VERSUS

ROBERT H. SCHULTE,

Respondent

PROOF OF MAILING—AFFIDAVIT

I, Edward P. Lobman, the attorney for State Farm Mutual Automobile Insurance Company, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 16th day of May, 1984, I placed with the Federal Express Delivery Service for overnight delivery, pre-paid, and properly addressed to the Clerk of the Supreme Court of the United States, within the time allowed for filing, the foregoing Petition for Writ of Certiorari.

_____
EDWARD P. LOBMAN

Subscribed and sworn to before me, at _____, _____, this _____ day of May, 1984.

_____
NOTARY PUBLIC

PROOF OF SERVICE
CERTIFICATE OF BAR MEMBER

I, Edward P. Lobman, the attorney for State Farm Mutual Automobile Insurance Company, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 16th day of May, 1984, I served copies of the foregoing Petition for Writ of Certiorari on the parties thereto, as follows:

1. On Robert H. Schulte, Respondent, by mailing a copy in a duly addressed envelope, with first-class postage prepaid, to his attorney of record, as follows:

To Steven B. Whitman, Esq.
Attorney for Respondent:
210 O'Keefe Avenue, Suite 900
New Orleans, Louisiana 70112

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APPENDIX "A"

MINUTE ENTRY
JANUARY 20, 1982
CASSIBRY, J.

CIVIL ACTION
NO. 81-3271
SECTION "E"

ROBERT H. SCHULTE

VERSUS

STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.

*****

This matter was heard in open court on January 6, 1982 on motion by defendant State Farm Mutual Automobile Insurance Company to dismiss, was argued by counsel for both sides, and submitted.

After due consideration,

IT IS ORDERED that the motion to dismiss is DENIED.

REASONS

In this diversity action brought under the Louisiana direct action statute, LSA:RS 22:655, the plaintiff seeks recovery for personal injury resulting from an accident in the State of Mississippi involving the automobile of the defendant's insured Donald Smith, a resident of Jackson, Mississippi. The defendant argues as a basis for its motion to dismiss that the plaintiff has no right of action under the

direct action statute because the accident occurred in Mississippi and the policy of insurance was delivered in Mississippi. The plaintiff contends that the direct action applies because the policy of insurance was issued in Louisiana.

Donald Smith made application for insurance on his automobile involved in the accident, a 1980 Oldsmobile, Delta 88, on March 31, 1980 to Larry Zachary, defendant's agent in Jackson, Mississippi. The application was forwarded to the regional office of defendant in Monroe, Louisiana and that office issued a policy of insurance dated March 31, 1980 and mailed it to Larry Zachary who delivered it to Donald Smith.

As I read Webb v. Zurich Insurance Company, 251 La. 558, 205 So. 2d 398 (1967) and Louisiana cases subsequent to it,[1] a Louisiana resident has a right of action against an insurance company under the direct action statute if the insurance policy was issued or delivered in Louisiana when the accident occurs in another state. The policy in this case was issued in Louisiana. This fact is stated clearly on the declarations page of the policy.

/S/ Signed
UNITED STATES DISTRICT JUDGE

[1] Morse v. Hartford Casualty Insurance Company, La. App. 301 So. 2d 741 (1974); Easterly v. Dynamic Enterprises, Inc., La. App. 334 So. 2d 467 (1967); Esteve v. Allstate Insurance Company, La. App. 343 So. 2d 353 (1977).

APPENDIX "B"

MINUTE ENTRY
JULY 30, 1982
CASSIBRY, J.

CIVIL ACTION
NO. 81-3271
SECTION "E" (3)

ROBERT H. SCHULTE

VERSUS

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

*****

This matter was heard in open court on June 9, 1982 on the motion of defendant State Farm Mutual Automobile Insurance Company for reconsideration of, or for new trial of, its motion to dismiss, was argued by counsel for both sides, and submitted.

After due consideration,

IT IS ORDERED that the motion is DENIED.

/S/ Signed
UNITED STATES DISTRICT JUDGE

August 5, 1982

APPENDIX "C"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION
NO. 81-3271
SECTION "E" MAG. 3

ROBERT H. SCHULTE

VERSUS

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

JUDGMENT

This matter came on for trial on the merits on the 2nd day of June, 1983.

PRESENT:

Steven B. Whitman
Attorney for Plaintiff
Robert H. Schulte

Edward P. Lobman
Attorney for Defendant
State Farm Mutual Automobile Insurance Co.

Upon considering the law and evidence to be in favor of plaintiff, and for the reasons orally assigned:

IT IS ORDERED, ADJUDGED AND DECREED That there be judgment herein in favor of plaintiff, Robert H. Schulte, against defendant, State Farm Mutual

Automobile Insurance Company in the sum of TWENTY-ONE THOUSAND FIVE HUNDRED THIRTY-EIGHT AND 50/100 ($21,538.50) DOLLARS plus court costs and legal interest from August 12, 1981 until paid.

New Orleans, Louisiana, this 7th day of June, 1983.

/S/ Signed

UNITED STATES DISTRICT JUDGE

APPENDIX "D"

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 83-3421
Summary Calendar

D. C. Docket No. CA 81-3271 "E"

ROBERT SCHULTE,

Plaintiff-Appellee,

versus

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Louisiana

Before GEE, POLITZ and JOHNSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 34;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

IT IS FURTHER ORDERED that defendant-appellant pay to plaintiff-appellee, the costs on appeal to be taxed by the Clerk of this Court.

JANUARY 9, 1984

ISSUED AS MANDATE: February 27, 1984.

APPENDIX "E"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 83-3421
Summary Calendar

ROBERT SCHULTE,

Plaintiff-Appellee,

versus

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Louisiana

(JANUARY 9, 1984)

Before GEE, POLITZ and JOHNSON, Circuit Judges.

PER CURIAM:

We defer, in this close diversity case, to the extensive knowledge and experience of the district court in Louisiana jurisprudence, the dispositive issue being one on which there is no authority precisely in point and the district court's disposition being a reasonable extrapolation from such authority as does exist.

AFFIRMED:

APPENDIX "F"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 83-3421

ROBERT SCHULTE,

Plaintiff-Appellee,

versus

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Louisiana

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ON PETITION FOR REHEARING

(February 17, 1984)

Before GEE, POLITZ and JOHNSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/S/ Signed
United States Circuit Judge

APPENDIX "G"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 83-3421

USDC #CA 81-3271 E

ROBERT SCHULTE,

Plaintiff-Appellee,

versus

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Louisiana

ORDER:

The motion of appellant for recall and stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including May 17, 1984, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this

Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

/S/ Signed
UNITED STATES CIRCUIT JUDGE
THOMAS GIBBS GEE

May 1, 1984.